BAIL SLIP

The appellant/Accused was directed to be released on bail as per the order of the Court dated 25.6.2001 and made in Crl.M.P.No. 2894/01 in Crl. Appl No. 219/2001 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 27-04-2007

CORAM

THE HONOURABLE MR.JUSTICE S.TAMILVANAN

CRIMINAL APPEAL No.219 of 2001

Balaji @ Balakrishnan ... Appellant /Accused

-vs-

State rep by
Inspector of Police
Papparapatty Police Station,
Dharmapuri District. ... Respondent/Complainant

Criminal Appeal filed u/s 374 Cr.PC. against the Judgment, dated 28.02.2001 passed in S.C.No.231 of 1998 on the file of the learned III Additional Sessions Judge, Dharmapuri District , Krishnagiri.

For appellant : Mr.C.A.Pandian

For respondent : Mr.Hasan Mohamed Jinnah
Govt. Advocate (crl. side)

J U D G M E N T

This appeal is directed against the judgment of conviction and sentence imposed in S.C.No.231/1998 on the file of the III Additional Sessions Judge, Krishnagiri.

2. The brief facts of the case are as follows :

The appellant / accused is the younger brother of the deceased Manickam and that there was a land dispute between them, due to which on 04.09.1994, at about 1 p.m, the appellant / accused stabbed the deceased on his left side stomach portion, at the scene of occurrence, which caused

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his death. The appellant / accused was charged for an offence, punishable under Section 302 IPC. In support of the prosecution case, P.Ws 1 to 11 were examined. Exs.P.1 to P.16 were marked, apart from the Material Objects, M.Os. 1 to 5.

3. P.W.1 had been one of the panchayatdars in the panchayat, conducted prior to the occurrence. According to P.W.1, the panchayat was convened only at the instance of the appellant / accused to settle the land dispute between the appellant / accused and the deceased. Though the decision of the panchayat was accepted by the deceased, the appellant did not accept the same. When the panchayat was about to be wound up, unexpectedly, the appellant / accused took out a knife and stabbed the said Manickam, due to which intestine came out and Manickam fell down with bleeding injuries. Then P.W.1 and others took him to the hospital, where the doctor found him dead. The wife of the deceased has been examined as P.W.2, who has spoken to about the property dispute between the appellant/ accused and the deceased, prior to the occurrence. P.W.3 has also deposed evidence on the same line of the evidence given by P.W.1 about the occurrence that had taken place, prior to the occurrence, subsequent wordy quarrel and the stabbing of accused by the appellant / accused. Medical evidence given by P.W.4, who conducted post mortem on the dead body of the deceased has corroborated the evidence of the eye witnesses.

4. Learned counsel appearing for the appellant contended that P.W.1, Govindasamy and P.W.2 Chandra are brother-in-law and wife respectively of the deceased. Therefore, they could have been treated as interested witnesses by the trial court. Merely, because the aforesaid witnesses are close relatives, their evidence cannot be discarded, solely on the ground. Though the appellant / accused is the bother of the deceased, he had stabbed him. As the aforesaid witnesses are close relatives, their evidence has to be scrutnised by the court carefully.

5. As held by the court below, the evidence of the said witnesses corroborated by other oral and documentary evidence is trustworthy, to base the conviction. As found by the court below, it has been clearly established by the prosecution witnesses that on the date of occurrence, at the scene of occurrence, the appellant / accused had stabbed the deceased by M.O.1, Knife. It has been established that M.O.1 was recovered under the mahazar, Ex.P.7, in the presence of witnesses, as per the admissible portion of the confession given by the appellant / accused. The admissible portion of the confession statement leading to recovery of M.O.1 has been marked as Ex.P.6 and the mahazar under which M.O.1 was recovered has been marked as Ex.P.7.

6. Learned counsel appearing for the appellant contended that P.W.2 should have been treated hostile by the prosecution, but on a perusal of the evidence, I could find no contradiction in his evidence, so as to

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treat him hostile. According to him, he was the former president of the village panchayat board and that he attended the panchayat along with others. As the land dispute could not be settled in the panchayat, the same was wound up. Subsequently, on hearing the alarming voice of Manickam, the deceased turned back, and could see the appellant / accused stabbing the deceased, then he asked the persons present there to send the injured Manickam to the hospital. As found by the court below, the aforesaid evidence of P.W.3, available in the chief examination is no way a hostile evidence. I am of the considered view that the contradiction pointed out by the learned counsel for the appellant would not vitiate the prosecution case in any manner.

7. Considering the entire evidence both oral and documentary, I am of the view that there is no error or infirmity in the judgment rendered by the learned Additional Sessions Judge. The appellant/ accused stabbed the deceased, due to sudden provocation, as there was no settlement in the panchayat, in his favour. The court below has convicted the accused under Section 304 (II) IPC, though the charges were originally framed under Section 302 IPC and sentenced him to undergo 5 years RI.

8. I am of the considered view that there is no error or infirmity in the impugned judgment, so as to warrant the interference of this court, hence, the appeal fails.

9. In the result, confirming the conviction and sentence imposed by the court below, this Criminal Appeal is dismissed. As the accused is on bail, the trial court is directed to secure the accused to undergo the balance period of sentence imposed by the trial court.

tsvn

Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

To

1. THE JIDICIAL MAGISTRATE,PENNAGARAM

2. THE CHIEF JUDICIAL MAGISTRATE,
DHARMAPURI @ KRISHNAGIRI.

3. THE III ADDL SESSIONS JUDGE,
KRISHNAGIRI, DHARMAPURI DISTRICT.

4. THE PRL SESSIONS JUDGE,
KRISHNAGIRI AT DHARMAPURI DISTRICT.

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5. THE INSPECTOR OF POLICE
PAPPARAPPATTY POLICE STATION,
DHARMAPURI .

6. THE PUBLIC PROSECUTOR
HIGH COURT, CHENNAI.

7. THE SUPERINTENDENT
CENTRAL PRISON, VELLORE.
MBS (co)
sg 12/6/07

Crl.A.No.219 of 2001
27-04-2007

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